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10/520,854	01/11/2005	John Alan Gervais	PU020335	2672

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JOSEPH J. LAKS, VICE PRESIDENT  
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EXAMINER
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KIM, TAE K

ART UNIT	PAPER NUMBER
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2109

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/520,854

Applicant(s)

GERVAIS ET AL.

Examiner

Tae K. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on January 11, 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 01/11/2005, 10/31/2005.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is in response to the application filed on January 11, 2005 where Claims 1 – 19, of which Claims 1 and 16 are in independent form, are presented for examination.

#### ***Specification***

The abstract of the disclosure is objected to because the amendments to the abstract remove numerical citations to the invention discloses, yet fails to remove “(300)” in the first line; reinsert “(ALG)” to second line to define the used acronym. Correction is required. See MPEP § 608.01(b).

#### ***Claim Objections***

Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 6 is identical to Claim 3.

Claim 16 is objected to because of the following informalities: insert the word “An” at the beginning of the claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 2, 4, 8 – 10, 12, 16 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,986,133 B2, invented by Michael D. O'Brien et al. (hereinafter referenced as "O'Brien").**

1. Regarding Claims 1, 8, and 16, O'Brien discloses a system and method of receiving an application level gateway (ALG) file (Fig. 2; Col. 6, Lines 34-55; agent fetches file from the server) at a bi-directional communication device (Fig. 1; Col. 4, Lines 22-25; another server or any other interconnect system, also called a gateway), comparing at least one compatibility parameter of said ALG file with features of said bi-directional communications device (Col. 5, Lines 55-58; Col. 12; Lines 48-54; upgrade policy defining which IP address or hostname of the server will provide updates and the "serverName" component parameter specifying the IP address or host name of the server the agent will inquire about the update), and storing the ALG file at the communications device in response to a favorable comparison of at least one compatibility parameter (Col. 5, Lines 55-58; Col. 12; Lines 48-54; if the "serverName" component parameter matches the IP address or hostname of the server carrying the particular updates match, the upgrade process will start and the agent will download the upgrade).

2. Regarding Claims 2 and 17, O'Brien discloses all the limitations of Claims 1 and 16 above. O'Brien further discloses of rejecting the ALG file at the communications device in response to an unfavorable comparison of at least one compatibility parameter (Col. 5, Lines 27-30, 32-34; upgrade policies allow system administrators to determine

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which target devices will or will not receive a specific upgrade).

3. Regarding Claim 4, O'Brien discloses all the limitations of Claim 1 above.

O'Brien further discloses that at least one compatibility parameter comprises a file size of the ALG file (Col. 10, Lines 33-50; Col. 11, Lines 56-59; specifies the amount of memory needed for the file in the communication device).

4. Regarding Claims 9 and 10, O'Brien discloses all the limitations of Claim 1 above. O'Brien further discloses that at least one compatibility parameter comprises a hardware family version (Col. 12, Lines 5-25; "component" parameter defines the component hardware that requests the update) and at least one compatibility parameter comprises a software family version (Col. 12, Lines 5-18, 27-30, 41-43; "version" parameter defines the software version already stored in the component and the agent will only request upgrades that only apply to that version).

5. Regarding Claim 12, O'Brien discloses all the limitations of Claim 1 above.

O'Brien further discloses that the system periodically polls a service provider to determine if at least one of a new and updated ALG file is available, then sends a request for an available ALG file and receives said requested ALG file from an access network (Col. 4, Lines 28-30, 56-59; agent polls the server for updates and, if an update is available, fetches and applies the update to the device).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien as applied to Claims 1 and 16 above.**

6. Regarding Claims 11 and 18, O'Brien discloses all the limitations of Claims 1 and 16 as stated above. O'Brien discloses several types of bi-directional devices that can implement the disclosed system and method (Fig. 1; Col. 4, Lines 23-26; devices can be a monitor, printer, copier, cell phone, PDA, etc.). However, O'Brien does not specifically disclose that the bi-directional communication device is a cable modem.

It is well known at the time the application was filed that a cable modem is a bi-directional communication device. It would be obvious to one skilled in the art to apply the file updating system to a cable modem. A cable modem is an obvious deviation of a bi-directional communication device that may be suggested in O'Brien. A cable modem, just as with any other communication device, has data files associated with its operations and periodic updating is required to have it function properly.

Examiner takes Official Notice (see MPEP § 2144.03) that a cable modem is a common bi-directional communication device found within a computer networking environment, which was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument

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to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

**Claims 3, 5 – 7, 14, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien as applied to Claims 1 and 16 above, and further in view of U.S. Patent 5,991,774, invented by Allan R. Tate et al. (hereinafter referenced as "Tate").**

7. Regarding Claims 3, 6, 7, and 14, O'Brien discloses all the limitations of Claim 1 as stated above. O'Brien also discloses the use of a firewall (Fig. 1; Col. 4, Lines 13-16). However, O'Brien does not specifically disclose that at least one compatibility parameter comprises of a header format version or a header CRC value of the ALG file. Nor does O'Brien disclose that at least one compatibility parameter comprises of a body CRC value or the use of the ALG files by a firewall to control data traffic.

Tate discloses a method of uniquely identifying files providing a system for file security using the CRC system on the transferred files to compute the CRC value for the file including a header to identify the body of the file as being a CRC file (Abstract; Col. 2, Lines 4-11). Furthermore, the use of a library file with a unique identification

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number will verify each version to determine if it is to be installed on the desired device (Col. 3, Lines 26-33; controls data traffic). The unverified files would not be used and discarded (Col. 2, Lines 8-11). It would be obvious to one skilled in the art to apply the method disclosed in Tate to the system and method disclosed in O'Brien to use CRC conversions on the header of the file and the body of the file. This would improve security and to verify the files that are being transferred to the communication device are not corrupted. Tate's method further provides protection of the files against viruses, tampering, or corruption (Col. 2, Lines 28-33).

8. Regarding Claim 5, O'Brien discloses all the limitations of Claim 1 as stated above. However, O'Brien does not specifically disclose that at least one compatibility parameter comprises of a header CRC value of the ALG file.

Tate discloses that a prior method of verifying that a received file is not corrupted was by having a specific file type defined to have a header having a CRC (Col. 1, Lines 26-29). The method and system disclosed in Tate is an improvement upon this common technique of defining files to provide security within an automated file updating system. It would be obvious to one skilled in the art to attach a CRC header to a packet to improve security and to verify the files that are being transferred to the communication device are not corrupt, a virus, or modified.

9. Regarding Claims 15 and 19, O'Brien discloses all the limitations of Claims 1 and 16 as stated above. O'Brien further discloses that at least one compatibility parameter comprises a file size of the ALG file (Col. 10, Lines 33-50; Col. 11, Lines 56-59; specifies the amount of memory needed for the file in the communication device).



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O'Brien further discloses that at least one compatibility parameter comprises a hardware family version (Col. 12, Lines 5-25; "component" parameter defines the component hardware that requests the update) and at least one compatibility parameter comprises a software family version (Col. 12, Lines 5-18, 27-30, 41-43; "version" parameter defines the software version already stored in the component and the agent will only request upgrades that only apply to that version). However, O'Brien does not specifically disclose the use of a header comprising of compatibility parameters selected from a group comprising of a header format version, a header size, a header expected CRC, or a body expected CRC.

Tate discloses the use of a CRC header to determine the compatibility of a particular file (Col. 1, Lines 26-29) and the use of a header to identify the body of the file as being a CRC computed file (Abstract; Col. 2, Lines 4-11). It would be obvious to one skilled in the art to combine the teaching in Tate with the system and method disclosed in O'Brien to use CRC conversions on the header of the file and the body of the file. This would improve security and to verify the files that are being transferred to the communication device are not corrupted. Tate's method further provides protection of the files against viruses, tampering, or corruption. The additional level of protection decreases the likelihood that any malicious or corrupt files will be autonomously downloaded into one of the connected devices.

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien as applied to Claim 1 above, and further in view of U.S. Patent 6,031,830, invented by Paul A. Cowen (hereinafter referenced as "Cowen").**

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10. Regarding Claim 13, O'Brien discloses all the limitations of Claim 1 as stated above. O'Brien, however, does not specifically disclose that the request to download the files occurs after a configuration file is identifying at least one new or updated ALG file is received and first compared by the device.

Cowan discloses a system and method of downloading new or updated files where the device receives a configuration file from said service provider, which identifies at least one new or updated ALG files, then the devices sends a request for those files, and receives the requested files from an access network (Figs. 7(a) – (h); Col. 10, Lines 27 – Col. 11, Line 54; terminal requests query to host/server, which in turn sends a package definition packet identifying the file; terminal then compares versions and if they are different, terminal transmits the file request packet and the host/server begins transmitting file data). It would be obvious to one skilled in the art to verify that the files are new or updated before downloading them into the terminal. Not only will that save resources that would have been used if the files are downloaded and then verified, but it also prevents the terminal from accidentally deleting the prior version of the files prior to completing the download of the new or updated files.

#### **Additional References**

Additional references that are relevant to the pending application and not cited:

U.S. Patent 5,845,128 – method and system of verifying the validity of the file and analyzing revision indicators, file sized and checksums;

U.S. Patent 6,009,547 – method and system that utilizes CRC method to verify data transferred from a host to a storage system and vice versa;

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U.S. Patent 6,029,196 – system that automatically configures a client with files residing in a server that contain preferences, configuration info, etc.

U.S. Appl. 2002/0133586 A1 – method and device that protects a network by monitoring both incoming and outgoing data traffic based on associated rules table

### **Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Coby, can be reached on (571) 272-4017. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

TKK

8/23/2007

  
**FRANTZ COBY**  
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